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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1116 OF 2005

Satish Ratanchand Changediya ...Appellant.
Vs.
Smt.Badambai Ambarchand Changediya & Ors. ...Respondents.

Mr. R.G.Ketkar for the appellant.
Mr. J.S.Deo for respondent Nos. 9 & 10.

CORAM : ANOOP V. MOHTA,J.
DATED : 23rd July, 2007

P.C.

1. Respondent No.1 had filed the suit for partition and for separate possession. After considering the material placed on record, both the Courts come to the conclusion that the properties in question are the Joint Hindu Family Properties and the respective parties, as ordered, are entitled to the partition and separate possession. The operative part of the order is as under:-

1. The suit decreed.

2. Plaintiff is entitled to partition and separate possession of the suit-houses to the extent of 7/72nd share.

3. Each of the defendants No.10 and 11 are entitled to partition and separate possession of the suit-houses to the extent of 7/72nd share subject to payment of court fee.

4. Each of defendants No.12 and 13 is entitled to partition and separate possession of suit-houses to the extent of

7/72nd share.

5. Defendants No.14 and 15 are jointly entitled to partition and separate possession of the suit houses to the extent of 1/72nd share.

6. Defendant No.9 is entitled to partition and separate possession to the extent of 1/3rd share, subject to payment of court fee.

7. Defendants do pay to the plaintiff, costs of the suit and bear their own.

8. A separate inquiry be held under order 20, rule 12(1)(c) of C.P.C. in respect of future mesne profits from the date of institution of the suit until delivery of possession to the plaintiff, of her share in the suit-houses.

2. The appellate Court, after considering the rival contentions as raised, has also dismissed the said suit. In the result, the above order passed by the Trial Court, remained intact.

3. The learned counsel appearing for the appellant, basically contended that the suit for partition excluding the Survey no.702 from consideration is impermissible. The pursis at Exhibit 109 was filed on record to show that the plaintiff has relinquished the right in the above property. Having once filed, the said pursis, the property, just cannot be overlooked. There is no question of relinquishment of right in Joint property in such fashion. Therefore, the grant

of partition decree is bad in law. Such partial partition is not permitted.

4. The learned counsel appearing for the respondents has pointed out that both the Courts after considering the rival contentions as raised, come to the clear conclusion that the suit is not bad for non-inclusion of entire joint family property. Mere pursis just cannot be the foundation to overlook defendant No. 1's case that the finding given by the Court in respect of the Gat No.702 in the earlier proceedings, as recorded, that the same is not the part of the Joint Hindu Family in question is vital. There was no such contention about impartiability was raised at the relevant time and just cannot be allowed to re-agitate the same again in the suit or in the second appeal.

5. Once the parties proved that the suit properties are the Joint Family Properties and based upon that the property has been divided by the Court by rejecting all other issues including the principle of res-judicata, non-joinder of necessary parties and law of limitation. I am of the view that there is no perversity as such which needs no interference in finding given and arrived at by both the Courts while

granting the partition.

6. The submission that the property bearing CTS Nos. 1545 of Ghodnadi and 112 of Shaniwarpeth, Pune are the self-acquired property of late Manikchand and Ratanchand has also been considered in the judgment. This finding of facts, therefore, in no way disturb the conclusion as arrived at by the Court.

7. Resultantly, the Second Appeal fails and it is dismissed.

8. The learned counsel appearing for the appellant seeks to continue of the interim order passed by this Court in Civil Application No. 1605 of 2005 which has been in existence since 10/10/2005 in terms of prayer Clause (a). Prayer clause (a) reads thus:-

> "(a) Grant, pending the hearing and final hearing of the Second Appeal, stay to the execution and/or operation of Judgment and Decree dated 17th February, 2005 passed by the Learned II Additional District Judge, Pune at Pune in Civil Appeal No. 1054 of 2000 arising from the Judgment and Decree dated 31st August, 2000 passed by the Learned 4th Joint Civil Judge, Senior Division, Pune at pune in Special Civil Suit No.682 of 1987;"

9. In view of this, the interim order granted on

10/10/2005 shall continue for eight weeks.

(ANOOP V. MOHTA, J.)